



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

December 21, 2009

Secretary Michael W. Sole
Florida Department of Environmental Protection
3900 Commonwealth Blvd, MS 49
Marjory Stoneman Douglas Building
Tallahassee, FL 32399-3000

Dear Secretary Sole:

Subject: District's Priorities to Protect Water for the Natural System

The South Florida Water Management District (District) is pleased to submit for consideration the 2010 Priority Water Body List and Schedule for the establishment of Minimum Flows and Levels (MFLs) as required by Section 373.042(2), Florida Statutes (F.S.). Also provided is an updated list of the water bodies for which water reservations and restricted allocation area rules are being developed, as requested by the Department. The 2010 Priority Water Body List and Schedule for Minimum Flows and Levels which was approved by the District's Governing Board on October 15, 2009 is attached, as well as the resolution and the supplemental list of water reservations and restricted allocation area rules to be developed.

In addition to the protection afforded by MFLs to avoid significant harm, water reservations and restricted allocation area rules can provide additional protections to water necessary for fish and wildlife. The District recognizes that each of these three types of rules can be applied to protect water from consumptive uses and will choose the appropriate type of rule based on two key factors: 1) the legal protections required for Everglades Restoration project implementation, and 2) the specific water resource affected and its unique characteristics.

The District is developing water reservation rules based on the evaluation of existing water availability and consideration of future water to be made available by the Comprehensive Everglades Restoration Plan (CERP) and other restoration projects. The District is required to use its reservation or allocation authority to protect water for the natural system identified by CERP projects prior to executing a cost-share agreement to construct these projects with the U.S. Army Corps of Engineers, consistent with Section 373.470 (3)(c), F.S. The District's first water reservation rule was adopted for the Picayune Strand and Fakahatchee Estuary in 2009, and new rules are planned to be adopted in 2010 for (1) the Kissimmee River and Chain of Lakes, and (2) the North Fork of the St. Lucie River in support of the CERP Indian River Lagoon – South Project. The U.S. Congress may authorize several additional CERP projects in

the near future. In anticipation, the District is initiating rule development in 2009 to reserve water for the Caloosahatchee Estuary in support of the Caloosahatchee River (C-43) West Storage Reservoir project. It is anticipated that rule adoption will occur in 2011 in advance of executing a cost-share agreement for construction with the U.S. Army Corps of Engineers.

The District also applies a second type of regulatory mechanism, known as Restricted Allocation Area rules, for protecting natural systems from consumptive uses. This type of rule fulfills federal and state requirement to protect water provided by CERP projects. These rules are defined in Section 373.223(1), F.S., which specifies the three-prong test used for issuing Consumptive Use Permits. The Restricted Allocation Area rules are outlined in Section 3.2.1 of the Basis of Review for Water Use (SWFMD, 2009). One of these rules is the Regional Water Availability rule, which was adopted by the District's Governing Board on February 15, 2007. This rule limits the allocation of water from the Everglades and the Loxahatchee River Watershed. The rule protects water resources by limiting the availability of water for consumptive use allocations. Another Restricted Allocation Area rule for the Lake Okeechobee Service Area was adopted in 2008. This includes withdrawals from Lake Okeechobee and the C-43 and C-44 canals, respectively. These rules protect water for the natural system from future consumptive uses, regardless of the additional water that may be provided by CERP projects, and may be relied upon to demonstrate protection to the federal government. This approach will be used for several projects that may be authorized by the U.S. Congress in the near future.

Although the focus of the District's recent efforts has been on water reservation and restricted allocation area rules, MFL criteria have been adopted for 12 water bodies within the SFWMD including eight water bodies in 2001, two in 2002, and two in 2006. These water bodies include Lake Okeechobee, four areas of the Everglades, the northern portion of the Biscayne aquifer, the Lower West Coast Aquifer system encompassing three semi-confined aquifers, Caloosahatchee River and Estuary, St. Lucie River and Estuary, the Northwest Fork of the Loxahatchee River and Estuary, Lake Istokpoga, and Florida Bay. Additional information will be developed on Estero and Rookery Bays to initiate MFL rule development in 2011 and 2012, with rule adoption concluding the following year.

Please note that the MFL Priority Water Body List no longer includes - Biscayne Bay. Portions of the Biscayne aquifer are already protected by an MFL, but additional protection measures will be needed due to the CERP Biscayne Bay Coastal Wetlands Project to comply with federal and state law. An independent, scientific peer review of available information for Biscayne Bay was completed in October 2008. The peer-review panel's final report, dated November 13, 2008, will be used to evaluate rule

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development options in 2010. Waters in the Bay will most likely be protected through a Water Reservation or a Restricted Allocation Area rule, which will be initiated in 2010.

We will continue to modify the list in the future as necessary to reflect authorizations and appropriations by the U.S. Congress for CERP projects that will require protecting water for the natural system in advance of executing a cost-share agreement for construction.

We look forward to the Florida Department of Environmental Protection's review and approval of this year's list. If you have any questions, please contact Ms. Brenda Mills, Lead Planner, Everglades Restoration Policy and Coordination Department, at 561.682.6536 or bmills@sfwmd.gov.

Sincerely,



Carol Ann Wehle
Executive Director
South Florida Water Management District

CAW/bm
Enclosure

c: Kenneth Ammon, P.E., SFWMD
Janet Llewellyn, DEP
Brenda Mills, SFWMD

1 **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

2
3 **RESOLUTION NO. 2009 - 1033**

4
5 **A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA**
6 **WATER MANAGEMENT DISTRICT TO AUTHORIZE SUBMITTAL OF THE**
7 **PROPOSED 2010 PRIORITY LIST AND SCHEDULE FOR MINIMUM FLOWS AND**
8 **LEVELS TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**
9 **(FDEP) FOR REVIEW AND APPROVAL PURSUANT TO SECTION 373.042(2),**
10 **FLORIDA STATUTES; PROVIDING AN EFFECTIVE DATE.**

11
12 **WHEREAS**, the South Florida Water Management District is required by
13 Section 373.042, Florida Statutes, to conduct an annual update of the Priority List for
14 Minimum Flows and Levels to reflect changing water resource management priorities,
15 such as the importance of the waters to the region and existence of or potential for
16 significant harm to the water resources; and

17
18 **WHEREAS**, prior to finalizing their updated minimum flows and levels priority
19 list annually, the water management districts are required to forward it to the Florida
20 Department of Environmental Protection (FDEP) for its review and approval; and

21
22 **WHEREAS**, FDEP has requested that the District keep it informed of other
23 rulemaking efforts by the District to address water resource management priorities
24 such as water reservations and restricted allocation area rules; and

25
26 **WHEREAS**, the proposed 2010 Priority List and Schedule for Minimum Flows
27 and Levels considers the differing resource issues addressed by minimum flows and
28 levels based on staffing and technical resources to ensure successful completion of
29 rulemaking; and

30
31 **NOW THEREFORE, BE IT RESOLVED** by the Governing Board of the South
32 Florida Water Management District:

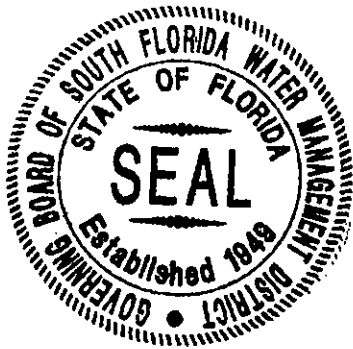
33
34 **Section 1.** The Governing Board of the South Florida Water Management District
35 hereby approves submission of the proposed 2010 Priority List and Schedule for
36 Minimum Flows and Levels and to the Florida Department of Environmental Protection
37 for review and approval pursuant to Section 373.042, Florida Statutes.

38
39 **Section 2.** A copy of the proposed 2010 Priority List and Schedule for Minimum
40 Flows and Levels is attached hereto and made a part hereof.

1 **Section 3.** This resolution shall take effect immediately upon adoption.

2
3 **PASSED** and **ADOPTED** this 15 day of October 2009.

6 SOUTH FLORIDA WATER MANAGEMENT
7 DISTRICT, BY ITS GOVERNING BOARD



9
10 BY: _____
11 Chair

[Signature]

12
13
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16
17 ATTEST:

APPROVED AS TO FORM:

18
19 *[Signature]*
20 _____
21 District Clerk/Secretary

BY: *[Signature]*
Office of Counsel

Attachment A

SFWMD

2010 Priority List and Schedule

Minimum Flows and Levels

Water resources currently being studied for development of MFLs in 2011 and 2012 and are projected for adoption in 2012 and 2013, respectively, include:

- Estero Bay
- Rookery Bay

Attachment B

SFWMD

Water Reservation and Restricted Allocation Areas

Rule Development Activities for 2010

Kissimmee River and Upper Chain of Lakes Water Reservation, which includes

Kissimmee River and its floodplain

Lakes Kissimmee, Cypress and Hatchineha

Lake Tohopekaliga

East Lake Tohopekaliga, Fell's Cove, Lake Ajay

Lakes Hart and Mary Jane

Lakes Myrtle, Joel and Preston

Alligator Chain of Lakes (Alligator, Brick, Lizzie, Coon, Center and Trout)

Lake Gentry

- **Initiated rule development - 2008**
- **Completed peer review - 2009**
- **Continue rule development - 2009**
- **Initiate rule making - 2010**
- **Request rule adoption - 2010**

North Fork of the St Lucie River Water Reservation (in support of the CERP's Indian River Lagoon-South Project)

- **Initiated rule development - 2008**
- **Completed peer review - 2009**
- **Continue rule development - 2009**
- **Initiate rule making - 2009**
- **Request rule adoption - 2010**

Attachment B Continued

Caloosahatchee Estuary Water Reservation (in support of the CERP's Caloosahatchee (C-43) West Basin Reservoir)

- Initiate rule development - 2009
- Conduct peer review – 2010
- Continue rule development - 2010
- Request rule adoption - 2011

Biscayne Bay projected rule making (in support of the CERP's Biscayne Bay Coastal Wetlands Project)

- Initiate rule development - 2010
- Request rule adoption - 2011

Everglades National Park (in support of the CERP's C-111 Western Spreader Canal Project)

- Apply Restricted Allocation Area Rule (effective April 23, 2007)

Water Conservation Area 2 and ENP (in support of the CERP's Site 1 Impoundment and Broward County Water Preserve Area Projects)

- Apply Restricted Allocation Area Rule (effective April 23, 2007)